

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Section 17 of the)
Cable Television Consumer Protection and) ET Docket No. 93-7
Competition Act of 1992)
)
Compatibility Between Cable Systems)
and Consumer Electronic Equipment)

**REPLY OF THE CONSUMER
ELECTRONICS GROUP OF THE
ELECTRONIC INDUSTRIES ASSOCIATION**

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FEDERAL COMMUNICATIONS COMMISSION
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**REPLY OF THE CONSUMER
ELECTRONICS GROUP OF THE
ELECTRONIC INDUSTRIES ASSOCIATION**

The Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") hereby replies to the oppositions and comments that were filed in response to the pending petitions for reconsideration and clarification of the Report and Order ("Order") in the above-captioned proceeding on July 28, 1994.¹

As an initial matter, EIA/CEG notes that no party has opposed its requests that the Commission: (1) lower the image channel interference level to 50 dB for frequencies between 714 and 804 MHz; and (2) standardize the upper frequency limit for cable-ready receivers at 804 MHz. The Commission should therefore modify its Order accordingly. In the remainder of this reply, EIA/CEG will explain why the Commission should grant the other relief requested by EIA/CEG.

¹ 9 FCC Rcd 1981 (1994). The parties filing responses to the pending petitions for reconsideration are listed in the appendix to this reply. The abbreviations appearing in the appendix are used in the citations to the pleadings referenced herein.

I. PARAGRAPH 42 OF THE ORDER REQUIRES CABLE SYSTEM OPERATORS TO PROVIDE SECURITY-ONLY DECODER MODULES TO ALL SUBSCRIBERS WHO REQUEST THEM.

In its petition, EIA/CEG asked the Commission to make clear that paragraph 42 of the Order requires cable operators to provide security-only decoder modules to all subscribers who request them. Several parties responded by asking the Commission to confirm that paragraph 42 does not foreclose cable operators from providing non-security features as well.² NCTA, in a cryptic footnote, has argued that cable operators should not be required to "make available a certain number of units which only descramble" for which there is "no demonstrated market demand."³

If NCTA is arguing that cable operators should not be required to provide security-only decoders, its request for clarification should be summarily denied. To grant NCTA's request would insulate non-security features from competition and totally frustrate the Commission's goals in this proceeding. As Compaq has explained, the public will not enjoy the full benefits of competition in the provision of non-security features if cable operators are permitted to bundle security-only modules with non-security features or, if bundling is permitted, the Commission fails to adopt adequate safeguards to prevent anticompetitive abuses.⁴ The Consumer Electronics Retailers Coalition ("CERC") has also explained why cable operators should not be permitted to bundle competitively-supplied equipment with monopoly transmission

² NCTA Opposition at 4; TW Opposition at 7; GI Comments at 1-2.

³ NCTA Opposition at 4 n.3.

⁴ Compaq Comments at 3.

services.⁵ Both of these parties have persuasively demonstrated that competition in the provision of non-security features will be distorted if cable operators are not required to physically separate security and non-security modules, or if the Commission fails to prescribe competitive safeguards to prevent cross-subsidization and more subtle forms of bundling.

EIA/CEG, however, agrees with the cable parties that paragraph 42 does not require physical separation. Cable operators should therefore be allowed to provide decoder modules that include non-security features, as long as subscribers also have the option of obtaining security-only decoder modules if they so desire. Absent such an option, subscribers could be forced to obtain additional non-security features from their cable operator, rather than securing these features -- if they so choose -- from a third-party vendor or from consumer electronics equipment. NCTA's claim that there is no demonstrable market demand for security-only modules appears grounded in the fact that cable operators currently offer bundled cable boxes only. NCTA's assertion that every subscriber will continue to want a bundled cable box is nothing more than wishful thinking. Were NCTA's claim true, there would have been no need for the Cable Act or this proceeding. The Commission should therefore clearly state that cable operators must provide security-only decoders -- for each receiver -- for which a subscriber makes a request.

The Commission should also grant the CERC's request that the Commission clarify paragraph 29 of the Order and require security and non-security functions to be separated in all new set-top boxes which meet the cable-ready standards.⁶ CERC correctly points out that

⁵ CERC Opposition at 3.

⁶ CERC Opposition at 4.

such separation will create competition in the provision of non-security features in the set-top world,⁷ and will eliminate any incentive which cable operators might otherwise have to favor set-top boxes over set-back boxes. Consistent with the Commission's decision to encourage competition by separating security and non-security functions in the Decoder Interface, the Commission should introduce competition and consumer choice into the set-top world. There is no reason why cable operators should retain a monopoly over the provision of non-security features in set-top boxes.

In their July 28 filings, both NCTA and General Instrument have alluded to one of the many specifications of the Decoder Interface, the so-called command set.⁸ Discussion of Decoder Interface specifications, however, is inappropriate at this stage of the proceeding, and EIA/CEG will therefore not respond other than to say that EIA/CEG's proposal is flexible and future-oriented. Once the Decoder Interface standard is presented to the Commission on August 15, there will be ample opportunity to discuss the command set.

II. THE NEGATIVE LABELING REQUIREMENT IS WITHOUT STATUTORY FOUNDATION AND SHOULD NOT BE IMPOSED ON PRODUCTS THAT ARE NOT "CABLE-READY."

In its petition, EIA/CEG asked the Commission to eliminate the requirement that receivers which are not "cable-ready" bear negative labels stating this fact. NCTA and Cablevision have urged the Commission to retain this requirement to address what they perceive to be consumer frustration with the "limitations" and "performance" of consumer electronics

⁷ It is clear that set-top boxes will be prevalent for some period of time until the installed base of television receivers is replaced.

⁸ NCTA Opposition at 5; GI Comments at 4.

equipment.⁹ Both parties have the problem backwards. Consumers are not confused by consumer electronics equipment. Rather, consumers are confused and frustrated because of the practices of cable operators -- signal scrambling, channel mapping, and the omnipresent set-top box -- which prevent them from utilizing the features of their television receivers. Absent these practices, there would be no consumer confusion or frustration. These problems have been created by the cable industry. The solution should rest with the cable industry. Moreover, neither NCTA nor Cablevision has identified any statutory provision that would authorize the Commission to promulgate a negative labeling requirement.¹⁰ The Commission should therefore eliminate this aspect of its rules.

In its petition, EIA/CEG also sought clarification of the phrase "*fully compatible with cable service*" and language "that otherwise conveys the impression" of full compatibility. NCTA argues that this language must be read broadly to prohibit the use of factual phrases, such as "capable of receiving 125 cable channels."¹¹ EIA/CEG is concerned that such a broad, open-ended interpretation would effectively prevent receiver manufacturers from making any factual statements about the capabilities of their products that are not "cable-ready." Plainly, the

⁹ NCTA also suggests that the Commission require negative labels to be placed on television screens and on the front of VCRs. NCTA's apparent logic is that the label will be more visible to consumers. Virtually all consumer electronics equipment, however, is sold in boxes. Labels on television screens or the front of VCRs would not give consumers information before they purchase equipment. This proposed requirement would, therefore, not educate consumers at the appropriate time.

¹⁰ NCTA purports to find support for its position in Section 624A of the 1992 Cable Act. NCTA Opposition at 11. Section 624A, however, only authorizes the Commission to specify the requirements for "cable-ready" or "cable compatible" receivers; it does not empower the Commission to prescribe labelling for all other equipment.

¹¹ This statement is reminiscent of NCTA's old position that receivers should not even have tuners at all. That position was properly abandoned long ago.

Commission could not have intended such a result. How is consumer education furthered by prohibiting the use of factual statements? The Commission should, therefore, clarify that purely factual statements are permitted under this rule.

III. THE EFFECTIVE DATE OF THE RESTRICTIONS ON THE USE OF "CABLE-READY" AND SIMILAR TERMS SHOULD BE DELAYED.

The Order prohibits the use of the terms "cable-ready" or "cable-compatible" in the marketing of non-cable-ready receivers manufactured or imported after October 31, 1994.¹² EIA/CEG has asked that the effective date of this rule be delayed until June 30, 1995, in order to permit manufacturers to use already printed stocks of material until the end of the model year. NCTA has opposed the requested delay, arguing that the costs involved are minimal and that manufacturers should have been prepared for the outcome of this rulemaking.¹³

Although the costs of reprinting materials may be considered small -- by an industry that faces no competition and whose high rates prompted Congress to pass the Cable Act -- these costs are significant to the highly competitive consumer electronics industry, which operates on razor-thin margins. The requested eight month delay in implementation would save both disruption and expense, with little additional consumer harm.¹⁴ Moreover, because both the costs of and time available for reprinting will not fall equally on all manufacturers,¹⁵ the

¹² 47 C.F.R. § 15.19(d)(2) (1993).

¹³ NCTA Opposition at 14.

¹⁴ NCTA's concerns about consumer confusion and frustration ring somewhat hollow. The cable industry's signal scrambling and channel mapping practices, after all, are the genesis of the problems which this proceeding is intended to address. If these practices were eliminated, there would be no consumer confusion.

¹⁵ Marketing materials are often produced six months in advance and are not easily altered.

early implementation of this requirement could create an unintended competitive imbalance. The Commission should therefore grant EIA/CEG's request for relief.

IV. CHANNEL MAPPING SHOULD BE PROHIBITED EXCEPT WHERE IT CAN BE SHOWN TO BE TECHNICALLY NECESSARY.

The practice known as "channel mapping" is a significant source of consumer confusion and incompatibility between consumer electronics equipment and cable systems. EIA/CEG asked the Commission to prohibit channel mapping because consumers become confused and frustrated when they attempt to tune channel mapped programming on a receiver without the use of a cable box. Although several parties have opposed any prohibition of channel mapping,¹⁶ none has denied the existence, prevalence and significance of the consumer confusion and equipment incompatibility caused by channel mapping.¹⁷ Nor has any of these parties offered an alternative solution to this problem.¹⁸

¹⁶ See NCTA Opposition at 6-8; Cablevision Opposition at 4-9; TW Opposition at 2-7.

¹⁷ Although NCTA and others feign disappointment that EIA/CEG has "changed" its position on channel mapping, EIA/CEG has always been concerned about this practice and the customer confusion it creates. During negotiations with NCTA, EIA/CEG did not press its concerns about channel mapping in order to obtain the cable industry's support for the Compatibility Advisory Group's joint comments. That support never materialized, as several of the NCTA's most significant members opposed the substance of the joint comments. If finger pointing were productive, which it is not, EIA/CEG might note that NCTA has "changed" its position regarding the negative labeling of consumer electronics equipment and, more important, has failed to move forward in developing digital standards. (Indeed, NCTA did not, until recently, even nominate a co-chairman for the joint industry committee on digital standards.)

¹⁸ Cable operators have an economic incentive to channel map, because channel mapping encourages the use of otherwise unnecessary cable boxes.

The cable parties contend that channel mapping is required at times because of signal interference problems.¹⁹ Channel mapping is also claimed to be necessary, at times, because of the technical aspects of "trapping" signal security methods.²⁰ EIA/CEG recognizes these technical problems. The Commission should therefore balance the interests of consumers and cable operators by prohibiting channel mapping but, at the same time, creating a waiver mechanism for those situations in which cable operators can demonstrate that channel mapping is necessary for justifiable technical reasons. The other reasons for channel mapping cited by the cable parties are purely for the economic benefit of cable operators, and should not justify a waiver.

With the implementation of the Decoder Interface, ever increasing numbers of cable subscribers will not require cable boxes. If channel mapping continues unfettered, many subscribers with "cable-ready" receivers will be forced either to obtain otherwise unnecessary cable boxes or remain highly confused.²¹ Surely, the Commission did not intend to create an environment in which consumers must use cable boxes with "cable-compatible" receivers. A prohibition of channel mapping (with waivers available for technical reasons) is therefore necessary to make "cable-compatible" receivers truly compatible.

¹⁹ NCTA Opposition at 7; Cablevision Opposition at 4; TW Opposition at 3-4.

²⁰ TW Opposition at 4-5.

²¹ The cable parties note that it may be necessary for the Decoder Interface to download channel mapping information into cable-ready receivers. Given the Commission's deadline for the Decoder Interface standard, it is rather late to be proposing such a significant change. If the cable parties were truly concerned about channel mapping, they should restrict its use to those situations in which it is technically necessary.

V. THE TUNER OVERLOAD REQUIREMENT SHOULD BE REVISED.

In its petition, EIA/CEG asked the Commission to lower the beat suppression level for tuner overload from 55 dB to 51 dB. Cablevision opposes this change, contending that the lower beat suppression level would lower signal quality.²² There is no technical justification for Cablevision's claims. To begin with, cable operators such as Cablevision are only required to meet the lower 51 dB level. Consumer electronics manufacturers should not be treated any differently. Two other factors also militate against the higher level. First, the typical input level to the tuner is less than +10 dBmV, rather than the +15 dBmV indicated by Cablevision. Second, tuners generally perform 5 to 6 dB better than specification in order to guarantee compliance in high volume production. The higher level advocated by Cablevision will not produce any significant additional quality. It will, however, significantly increase material costs.²³ Consumers should not be burdened with the expense of unnecessary performance features. The Commission should therefore lower the beat suppression level as requested in EIA/CEG's petition.

VI. SOME RESTRICTIONS ON REMOTE CONTROL INFRARED CODES ARE NEEDED TO ENSURE THE COMPATIBILITY OF COMPETITIVELY-SUPPLIED REMOTES AND VCRS.

Only one party filed comments in support of those petitioners that requested elimination of the restriction on changing infrared ("IR") codes.²⁴ In their responsive filings,

²² Cablevision Opposition at 9-10.

²³ If the Commission concludes that the higher level is necessary, limiting the 55 dB level to 550 MHz (and to 51 dB between 550 and 804 MHz) would provide significant cost savings.

²⁴ HP Comments at 1-4.

the Home Recording Rights Coalition and the Consumer Federation of America and EIA/CEG have demonstrated the importance of protecting the investment that consumers have made in competitively-supplied devices.²⁵ Those arguments need not be repeated here. Suffice it to say that, if consumers are to enjoy continued compatibility between cable boxes and consumer-owned, competitively-supplied remote devices, restrictions on changing IR codes should be retained. At a minimum, cable operators should be required to continue to support IR codes that were in use as of the date of the Commission's Order.

VII. CONCLUSION

For all of the reasons set forth above, the Commission should affirm its pro-competitive policies, grant EIA/CEG's requests for relief, and deny those petitions that would deny consumers the benefits contemplated by Congress and the Commission.

Respectfully submitted,

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August 10, 1994

²⁵ HRRC/CFA Opposition at 6-10.

APPENDIX

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Consumer Electronics Group of the Electronics Industries Association ("EIA/CEG")

Consumer Electronics Retailers Coalition ("CERC")

General Instrument Corporation ("GI")

Hewlett-Packard Company ("HP")

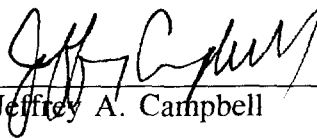
Home Recording Rights Coalition/Consumer Federation of America ("HRRC/CFA")

National Cable Television Association, Inc. ("NCTA")

Time Warner Entertainment Company, L.P. ("TW")

CERTIFICATE OF SERVICE

I, Jeffrey A. Campbell , do hereby certify that copies of the foregoing Reply of the Consumer Electronics Group of the Electronic Industries Association were served via first class mail or hand-delivered on the persons listed on the attached list on this, the 10th day of August, 1994.



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